

Adopted	Rejected
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COMMITTEE REPORT

YES:	11
NO:	0

MR. SPEAKER:

*Your Committee on Courts and Criminal Code, to which was referred Senate Bill 96, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Replace the effective date in SECTIONS 1 through 17 with
- 2 "[EFFECTIVE UPON PASSAGE]".
- 3 Page 1, delete lines 1 through 17.
- 4 Page 2, delete lines 1 through 34.
- 5 Page 2, between lines 37 and 38, begin a new paragraph and insert:
- 6 **"Advisory sentence" means the nonbinding guideline sentence**
- 7 **defined in IC 35-50-2-1.3."**
- 8 Page 2, strike line 41.
- 9 Page 2, line 42, strike "without consideration of mitigating".
- 10 Page 2, line 42, delete "circumstances,".
- 11 Page 2, line 42, strike "aggravating".
- 12 Page 3, line 1, delete "circumstances," and insert "~~circumstances~~".
- 13 Page 3, line 1, delete "or a prior conviction.".
- 14 Page 3, line 7, strike "presumptive" and insert "**advisory**".
- 15 Page 3, line 13, delete "Determination of".
- 16 Page 3, delete lines 14 through 18.

- 1 Page 3, line 19, delete "Sec. 2." and insert "**Sec. 1.**".
- 2 Page 4, delete lines 15 through 42.
- 3 Page 5, delete lines 1 through 7.
- 4 Page 5, line 10, strike "shall" and insert "**may**".
- 5 Page 5, line 10, delete ":".
- 6 Page 5, line 11, delete "(1)".
- 7 Page 5, line 11, delete "found by the jury (in a case" and insert ".".
- 8 Page 5, run in lines 10 through 11.
- 9 Page 5, delete lines 12 through 16.
- 10 Page 7, line 35, after "matters" insert "**aggravating circumstances**
- 11 **or**".
- 12 Page 7, between lines 36 and 37, begin a new paragraph and insert:
- 13 "**(d) A court may impose any sentence that is:**
- 14 **(1) authorized by statute; and**
- 15 **(2) permissible under the Constitution of the State of Indiana;**
- 16 **regardless of the presence or absence of aggravating circumstances**
- 17 **or mitigating circumstances."**
- 18 Page 8, delete lines 25 through 37.
- 19 Page 9, line 22, after ";" insert "**and**".
- 20 Page 9, line 24, delete "and".
- 21 Page 9, delete line 25.
- 22 Page 9, line 32, strike "presumptive" and insert "**advisory**".
- 23 Page 10, line 3, strike "a court" and insert "**the factfinder**".
- 24 Page 10, between lines 7 and 8, begin a new paragraph and insert:
- 25 "SECTION 5. IC 35-50-2-1.3 IS ADDED TO THE INDIANA
- 26 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 27 [EFFECTIVE UPON PASSAGE]: **Sec. 1.3. (a) For purposes of**
- 28 **sections 3 through 7 of this chapter, "advisory sentence" means a**
- 29 **guideline sentence that the court may voluntarily consider as the**
- 30 **midpoint between the maximum sentence and the minimum**
- 31 **sentence.**
- 32 **(b) Except as provided in subsection (c), a court is not required**
- 33 **to use an advisory sentence.**
- 34 **(c) In imposing:**
- 35 **(1) consecutive sentences in accordance with IC 35-50-1-2;**
- 36 **(2) an additional fixed term to an habitual offender under**
- 37 **section 8 of this chapter; or**
- 38 **(3) an additional fixed term to a repeat sexual offender under**

- 1 **section 14 of this chapter;**
- 2 **a court is required to use the appropriate advisory sentence in**
- 3 **imposing a consecutive sentence or an additional fixed term.**
- 4 **However, the court is not required to use the advisory sentence in**
- 5 **imposing the sentence for the underlying offense."**
- 6 Page 10, line 10, strike "fifty-five (55)".
- 7 Page 10, strike line 11.
- 8 Page 10, line 12, strike "circumstances or".
- 9 Page 10, line 12, delete "a prior conviction, and".
- 10 Page 10, line 12, strike "not more than ten (10) years".
- 11 Page 10, line 13, strike "subtracted for mitigating circumstances."
- 12 and insert "**between forty-five (45) and sixty-five (65) years, with the**
- 13 **advisory sentence being fifty-five (55) years."**
- 14 Page 10, line 27, strike "thirty".
- 15 Page 10, strike line 28.
- 16 Page 10, line 29, strike "circumstances or".
- 17 Page 10, line 29, delete "a prior conviction, and".
- 18 Page 10, line 29, strike "not more than ten (10) years".
- 19 Page 10, line 30, strike "subtracted for mitigating circumstances."
- 20 and insert "**between twenty (20) and fifty (50) years, with the**
- 21 **advisory sentence being thirty (30) years."**
- 22 Page 10, line 34, strike "ten".
- 23 Page 10, strike line 35.
- 24 Page 10, line 36, strike "circumstances or".
- 25 Page 10, line 36, delete "a prior conviction, and".
- 26 Page 10, line 36, strike "not more than four (4) years".
- 27 Page 10, line 37, strike "subtracted for mitigating circumstances."
- 28 and insert "**between six (6) and twenty (20) years, with the advisory**
- 29 **sentence being ten (10) years."**
- 30 Page 10, line 41, strike "four".
- 31 Page 10, strike line 42.
- 32 Page 11, line 1, strike "circumstances or".
- 33 Page 11, line 1, delete "a prior conviction, and".
- 34 Page 11, line 1, strike "not more than two (2) years".
- 35 Page 11, line 2, strike "subtracted for mitigating circumstances." and
- 36 insert "**between two (2) and eight (8) years, with the advisory**
- 37 **sentence being four (4) years."**
- 38 Page 11, line 13, strike "one".

1 Page 11, strike line 14.

2 Page 11, line 15, strike "years added for aggravating circumstances
3 or".

4 Page 11, line 15, delete "a prior conviction, and".

5 Page 11, line 16, strike "not more than one (1) year subtracted for
6 mitigating circumstances." and insert "**between six (6) months and
7 three (3) years, with the advisory sentence being one and one-half
8 (1 1/2) years.**".

9 Page 11, between lines 35 and 36, begin a new paragraph and insert:

10 "SECTION 11. IC 35-50-2-8 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) Except as
12 otherwise provided in this section, the state may seek to have a person
13 sentenced as a habitual offender for any felony by alleging, on a page
14 separate from the rest of the charging instrument, that the person has
15 accumulated two (2) prior unrelated felony convictions.

16 (b) The state may not seek to have a person sentenced as a habitual
17 offender for a felony offense under this section if:

18 (1) the offense is a misdemeanor that is enhanced to a felony in
19 the same proceeding as the habitual offender proceeding solely
20 because the person had a prior unrelated conviction;

21 (2) the offense is an offense under IC 9-30-10-16 or
22 IC 9-30-10-17; or

23 (3) all of the following apply:

24 (A) The offense is an offense under IC 16-42-19 or IC 35-48-4.

25 (B) The offense is not listed in section 2(b)(4) of this chapter.

26 (C) The total number of unrelated convictions that the person
27 has for:

28 (i) dealing in or selling a legend drug under IC 16-42-19-27;

29 (ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);

30 (iii) dealing in a schedule I, II, III controlled substance
31 (IC 35-48-4-2);

32 (iv) dealing in a schedule IV controlled substance
33 (IC 35-48-4-3; and

34 (v) dealing in a schedule V controlled substance
35 (IC 35-48-4-4);

36 does not exceed one (1).

37 (c) A person has accumulated two (2) prior unrelated felony
38 convictions for purposes of this section only if:

- 1 (1) the second prior unrelated felony conviction was committed
2 after sentencing for the first prior unrelated felony conviction; and
3 (2) the offense for which the state seeks to have the person
4 sentenced as a habitual offender was committed after sentencing
5 for the second prior unrelated felony conviction.

6 (d) A conviction does not count for purposes of this section as a
7 prior unrelated felony conviction if:

- 8 (1) the conviction has been set aside;
9 (2) the conviction is one for which the person has been pardoned;
10 or
11 (3) all of the following apply:

12 (A) The offense is an offense under IC 16-42-19 or IC 35-48-4.

13 (B) The offense is not listed in section 2(b)(4) of this chapter.

14 (C) The total number of unrelated convictions that the person
15 has for:

- 16 (i) dealing in or selling a legend drug under IC 16-42-19-27;
17 (ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);
18 (iii) dealing in a schedule I, II, III controlled substance
19 (IC 35-48-4-2);
20 (iv) dealing in a schedule IV controlled substance
21 (IC 35-48-4-3; and
22 (v) dealing in a schedule V controlled substance
23 (IC 35-48-4-4);

24 does not exceed one (1).

25 (e) The requirements in subsection (b) do not apply to a prior
26 unrelated felony conviction that is used to support a sentence as a
27 habitual offender. A prior unrelated felony conviction may be used
28 under this section to support a sentence as a habitual offender even if
29 the sentence for the prior unrelated offense was enhanced for any
30 reason, including an enhancement because the person had been
31 convicted of another offense. However, a prior unrelated felony
32 conviction under IC 9-30-10-16, IC 9-30-10-17, IC 9-12-3-1 (repealed),
33 or IC 9-12-3-2 (repealed) may not be used to support a sentence as a
34 habitual offender.

35 (f) If the person was convicted of the felony in a jury trial, the jury
36 shall reconvene for the sentencing hearing. If the trial was to the court
37 or the judgment was entered on a guilty plea, the court alone shall
38 conduct the sentencing hearing under IC 35-38-1-3.

1 (g) A person is a habitual offender if the jury (if the hearing is by
 2 jury) or the court (if the hearing is to the court alone) finds that the state
 3 has proved beyond a reasonable doubt that the person had accumulated
 4 two (2) prior unrelated felony convictions.

5 (h) The court shall sentence a person found to be a habitual offender
 6 to an additional fixed term that is not less than the ~~presumptive~~
 7 **advisory** sentence for the underlying offense nor more than three (3)
 8 times the ~~presumptive~~ **advisory** sentence for the underlying offense.
 9 However, the additional sentence may not exceed thirty (30) years."

10 Page 13, line 11, delete "," and insert "**and**".

11 Page 13, line 12, delete ", and the existence of a prior unrelated
 12 conviction".

13 Page 15, line 35, strike "presumptive" and insert "**advisory**".

14 Page 15, after line 37, begin a new paragraph and insert:

15 "SECTION 16. **An emergency is declared for this act.**".

16 Renumber all SECTIONS consecutively.

(Reference is to SB 96 as printed February 25, 2005.)

and when so amended that said bill do pass.

Representative Ulmer